IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4587 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

DAMJIBHAI CHHAGANBHAI KUMAR

Appearance:

1. Special Civil Application No. 4587 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

#. Heard Mr.Hardik C. Rawal, learned advocate appearing on behalf of the petitioner Corporation. Notice of Rule though served on the respondent, none appears for the respondent, nor any advocate seems have been engaged by the respondent in this proceeding and therefore, this

mater is taken up for hearing in absence of the respondent.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Surat in Reference No.289/89 dated 4th May, 1991, wherein the labour court has granted reinstatement with continuity of service without backwages of interim period. It is pertinent to note that at the time of issuing Rule on 11th February, 1993, this Court has not granted any stay against the reinstatement of the respondent workman. Mr.H.C.Rawal, learned advocate for the petitioner Corporation has submitted that looking to the chargesheet itself, when the incident had occurred on 25th December, 1986 and same being serious one, in such situation, the respondent workman was required to be dismissed from service and the Labour Court has committed grave error while granting reinstatement to the respondent workman. He also submitted that the workman misbehaved with the checking staff and recovered fare from certain passengers and not issued the tickets and on the basis of this misconduct which was found to have proved and though the labour court has also discussed this aspect at pg.36 of this petition that the conduct of the respondent workman is very bad and such workman cannot be reinstated in service but looking to his position and status as workman, he might not be aware of the consequence of such misconduct and therefore, the labour court has granted reinstatement. Mr.Rawal, learned advocate has also submitted that though the labour court has while passing the award discussed the aspect of awarding punishment of stoppage of three increments with cumulative effect but such punishment has not been incorporated in the final award passed by the labour court and this is the basic error which is found apparently from the record. Mr.Rawal, learned advocate has also submitted that the past record which was produced by the Corporation, wherein various misconduct of similar nature has been committed by the respondent workman and therefore, reinstatement awarded by the labour court in favour of the respondent workman is clear error committed by the labour court while exercising the powers under Section 11-A of the I.D.Act in favour of the respondent workman and same is required to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocate Mr.Rawal and also perused the award, so also the chargesheet and the dismissal order passed against the respondent workman. The incident in question occurred on

25th December, 1986. A bare perusal of the chargesheet itself indicates that the serious misconduct was committed respondent workman. The labour court has observed this aspect of misconduct which was found to have proved. The labour court has also considered the default card, wherein also similar type of misconducts committed by the respondent workman in past and same has also been criticized by the labour court. However, it seems that the labour court just in order to given one more opportunity to improve the workman and therefore granted reinstatement in his favour. But an apparent error committed by the labour court while not awarding any punishment though such misconduct was proved. Though labour court has observed and discussed that punishment of stoppage of three increments with cumulative effect should be awarded on the workman but this part has not been incorporated in final operative part of the award. However, even this punishment is not adequate looking to the serious misconduct committed by the respondent workman. Looking to the observations made by the labour court, for such serious misconduct, reinstatement cannot be granted but considering the fact that this Court, while issuing RULE, has not granted stay against reinstatement on 11th February, 1993 and as a result thereto, the respondent workman must have been reinstated and he has been working with the petitioner corporation for more than nine years. Therefore, to disturb reinstatement of the respondent after period of nine years, would not be fair at this stage and same would also not only adversely affect the family but also to the livelihood source of the family of the respondent workman. Therefore, in view of this Court, in interest of justice, it would not be proper to disturb reinstatement granted in favour of the respondent workman as same has been implemented by the petitioner Corporation as back as more than nine years. Therefore, considering the view taken by the Apex Court in situation in case of USMMAN MIYA reported in 2001 CLR pg.17, according to my opinion, reinstatement granted in favour of the respondent workman by the labour court should not be disturbed but for the misconduct committed by the respondent workman which was proved before the labour court, some punishment proportionate to the misconduct should be awarded on the respondent workman, will meet the ends of justice. So far awarding of the punishment for the misconduct committed by the workman, as suggested by the labour court, stoppage of three increments does not seem to be adequate proportionate for the serious misconduct committed by the respondent workman. Therefore, according to my opinion, some more severe punishment of stoppage of six increments with cumulative

effect, if awarded to the respondent workman, will meet the ends of justice.

#. In the result, present petition is partly allowed. Award passed by the Labour Court, Surat in Reference No.289 / 1989 dated 4th May, 1991 is modified to the effect that instead of stoppage of three increments with cumulative effect as suggested by the labour court, the respondent workman is ordered to undergo punishment of stoppage of six increments with cumulative effect. The directions issued by the Labour Court in respect of reinstatement in favour of the respondent workman and continuity of service without backwages of interim period will remain intact and same is not disturbed by this Court. Rule is made absolute accordingly with no order as to costs.

Date : 10-4-2002 [H.K.Rathod, J.]

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